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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/784,416

02/20/2004

Randal T. Byrum

END-5084NP

1876

27777

7590

05/17/2006

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EXAMINER

BAXTER, JESSICA R

ART UNIT

PAPER NUMBER

3733

DATE MAILED: 05/17/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/784,416

Applicant(s)

BYRUM, RANDAL T.

Examiner

Jessica R. Baxter

Art Unit

3733

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 08102005.02202004.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-13 are rejected under 35 U.S.C. 102(b) as being anticipated by WO 86/04498 to Hallberg.

Hallberg discloses an implantable surgical device having a deployed shape and an undeployed shape, said device comprising: an elongated flexible inflatable portion (4); and an elongated flexible and substantially inextensible band portion (7) having a distal end, a proximal end and a longitudinal axis therebetween, said band portion being attached to said inflatable portion along an inner face thereof (FIG. 1), wherein when said device is in its undeployed shape at least a portion of said band portion has a concave cross section, taken perpendicular to said longitudinal axis; wherein said inflatable portion and said band portion are integrally manufactured as one part (page 3, lines 25-26); wherein said band portion in its deployed shape has a substantially flat cross section (Page 3, lines 20-23), taken perpendicular to said longitudinal axis; wherein said band portion is at least partially made from at least one of silicone and polyurethane (Page 4, lines 12-17); further comprising a means for attaching said distal and proximal ends of said band together (; an injection port (6) in fluid communication with said inflatable portion.

3. Claims 1-3, 5-7, 9-12 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,601,604 to Vincent.

Vincent discloses an implantable surgical device having a deployed shape and an undeployed shape, said device comprising: an elongated flexible inflatable portion (16); and an elongated flexible and substantially inextensible band portion (11) having a distal end, a proximal end and a longitudinal axis therebetween, said band portion being attached to said inflatable portion along an inner face thereof (FIG. 1), wherein when said device is in its undeployed shape at least a portion of said band portion has a concave cross section, taken perpendicular to said longitudinal axis; wherein said inflatable portion and said band portion are integrally manufactured as one part (Column 3, lines 2-5) wherein said band portion in its deployed shape has a substantially flat cross section (FIG. 2), taken perpendicular to said longitudinal axis; further comprising a means for attaching said distal and proximal ends of said band together (13, 19); an injection port (14) in fluid communication with said inflatable portion.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jessica R. Baxter whose telephone number is 571-272-4691. The examiner can normally be reached on M-F 8:30AM - 5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on 571-272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3733

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



jrb

Jessica R Baxter
Examiner
Art Unit 3733



EDUARDO C. ROBERT
SUPERVISORY PATENT EXAMINER